

## RESOLUTION NO. 2021-23

### RESOLUTION OF THE SAUSALITO PLANNING COMMISSION APPROVING A DESIGN REVIEW PERMIT, MINOR USE PERMIT, ENCROACHMENT AGREEMENT FOR EXTERIOR RENOVATIONS FOR THE STORE FRONTS OF THE CAFÉ AND ART GALLERY AND SIDEWALK DINING AT THE CAFÉ AT 12 EL PORTAL AND 690 BRIDGEWAY (DR-MUP-EA 21-00131)

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**WHEREAS**, on May 13, 2021 an application was filed by the applicant, Michael Rex on behalf of property owner Loron Investments – Pete Petri, requesting Planning Commission approval of a Design Review Permit for modifications to the exterior of the existing building storefronts, a Minor Use Permit for outdoor dining located within an expanded public sidewalk along El Portal; and recommendation to the City Council for approval of an Encroachment Agreement for outdoor sidewalk seating, guardrail, projecting awnings, and freestanding planter boxes in the City’s right-of-way, at 12 El Portal and 690 Bridgeway (APN 065-133-17); and

**WHEREAS**, the project site is located within the Downtown Historic Overlay District, and per Sausalito Municipal Code Section 10.46.060.B, a Certificate of Appropriateness was required; and

**WHEREAS**, the Historic Preservation Commission conducted a duly-noticed public hearing on July 22, 2021 at which time all interested persons were given an opportunity to be heard, and on July 22, 2021, the Historic Preservation Commission considered the information contained in the staff reports and the Certificate of Appropriateness Application and found that the required findings listed in Sausalito Municipal Code Section 10.46.060.F could be made regarding exterior renovations to an existing building, and approved a Certificate of Appropriateness for the project located at 12 El Portal and 690 Bridgeway as shown **in Attachment 2** and

**WHEREAS**, the project is consistent with the purpose and intent of the Downtown Historic Overlay District as described in the staff report and the findings contained herein; and

**WHEREAS**, the project requires Planning Commission approval of a Design Review Permit for modifications to the exterior of the existing building storefronts, a Minor Use Permit for Sidewalk Dining, and a recommendation to the City Council on the Encroachment Agreement for fences and dining tables to be placed in the public right-of-way; and

**WHEREAS**, the Planning Commission conducted duly-noticed public hearing on September 8, 2021, at which time all interested persons were given an opportunity to be heard and the Planning Commission considered the information contained in the application materials, the staff report, and found that the required findings listed in Sausalito Municipal Code could be made; and

**WHEREAS**, the Planning Commission finds that the project is categorically exempt from California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines; and

**WHEREAS**, the Planning Commission finds that, as conditions herein, the project is consistent with the General Plan and complies with the requirements of the Zoning Ordinance and Subdivision Regulations.

**NOW, THEREFORE, THE PLANNING COMMISSION HEREBY RESOLVES:**

**Section 1.** A Design Review Permit for modifications to the exterior of the existing building storefronts, a Minor Use Permit for Sidewalk Dining, is approved based upon the attached findings in Attachment 1 and Attachment 2, subject to the attached conditions of approval in Attachment 3, and as shown in the project plans” date-stamped received on August 18, 2021 in Attachment 4.

**Section 2.** The Planning Commission recommends City Council approval of an Encroachment Agreement for outdoor sidewalk seating, guardrail, projecting awnings, and freestanding planter boxes in the City’s right-of-way, based upon the attached findings in Attachment 1, subject to the attached conditions of approval in Attachment 3, and as shown in the project plans date-stamped received on August 18, 2021 in Attachment 4.

**RESOLUTION PASSED AND ADOPTED**, at the regular meeting of the Sausalito Planning Commission on the 8<sup>th</sup> day of September, 2021, by the following vote:

AYES:	Commissioner: Graef, Luxenberg, Junius, Saad, Chair Feller
NOES:	Commissioner: None
ABSENT:	Commissioner: None
ABSTAIN:	Commissioner: None

  
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Lilly Whalen  
Secretary to the Planning Commission

**ATTACHMENTS**

1. Findings
2. Certificate of Appropriateness, issued July 22, 2021
3. Conditions of Approval
4. Approved Project Plans and Elevations

**SAUSALITO PLANNING COMMISSION NO. 2021-23**  
**September 8, 2021**  
**12 EI PORTAL AND 690 BRIDGEWAY**  
**DR-MUP-EA 21-00131**

**ATTACHMENT 1: FINDINGS**

# 1. DESIGN REVIEW PERMIT FINDINGS

## DESIGN REVIEW FINDINGS

The Planning Commission must determine whether the project is in conformance with the following findings (SMC 10.54.050.D):

1. *The proposed project is consistent with the general plan, any applicable specific plans, any applicable design guidelines, and this chapter.*

### 2021 General Plan Consistency:

- Commercial Policies and Programs Background for Downtown, LU-21 Pg. 52, calls for “evaluating experiential attractions, such as increased outdoor dining.” This Project proposes an outdoor dining area.
- Land Use and Growth Management Element: LU-40 Pg. 70, Policy LU-2.9 Downtown Historic Character, calls for: Protect the historic character of the downtown area. With its proposed pilasters, larger windows and corner entry, portions of the proposed storefronts will now reflect the original design of the building.
- Community Design, Historic and Cultural Preservation Element, CD-3 Page 127, Design Guidelines and Objective Standards: This proposed design of the new storefronts is compatible with Sausalito’s 2011 Downtown Historic Guidelines regarding the following objectives and specific elements. See Chapter 2 – Treatment of Historic Structures, Page 13 for the “Character-Defining Features of a Commercial Façade with Storefront:
  - Display windows are brought up to the edge of the sidewalk.
  - A low kickplate is shown at the base of the display windows.
  - Transom windows are proposed at the top of the display windows.
  - The strong lintel above the transom windows is preserved.
  - The entry doors are recessed.
- Community Design, Historic and Cultural Preservation Element: CD-11 Pg. 135, Policy CD-1.6 Public Realm: “Promote a positive relationship between the structure and the adjoining public realm.” Opening the interior of the restaurant to a new sidewalk dining area and restoring the original open entryway and passageway for pedestrians at the northwest corner of the building, implements this Policy.
- Community Design, Historic and Cultural Preservation Element: CD-12 Pg.136, Program CD-1.6.2 Structure-Street Relationship: “If a public-facing structure, new development and substantial remodels should include safe access for pedestrians.” The proposed sidewalk dining use will include a new sidewalk that will replace the existing sidewalk that has too great a cross slope to comply with ADA standards. The new proposed sidewalk will conform to ADA standards, thus increasing safety.
- Community Design, Historic and Cultural Preservation Element: CD-16 Pg. 140, Program CD-4.3.1 c. Downtown: “Recognize the needs of retailers in making design decisions.” To effectively market the art, larger windows at the Gallery are

necessary. The sidewalk dining area will enhance the economic viability of the restaurant use.

2. *The proposed architecture and site design complements the surrounding neighborhood and/or district by either:*
  - a. Maintaining the prevailing design character of the neighborhood and/or district; or
  - b. Introducing a distinctive and creative solution which takes advantage of the unique characteristics of the site and contributes to the design diversity of Sausalito.

The proposed design maintains the prevailing design character of the Downtown Historic Character as confirmed by the approval of the Certificate of Appropriateness by the Historic Preservation Commission.

3. *The proposed project is consistent with the general scale of structures and buildings in the surrounding neighborhood and/or district.*

No change is proposed to the building's scale.

4. *The proposed project has been located and designed to minimize obstruction of public views and primary views from private property.*

There is no work associated with the project that will impact private or public views by the proposed Project.

5. *The proposed project will not result in a prominent building profile (silhouette) above a ridgeline.*

The building is not located on a ridgeline.

6. *The proposed landscaping provides appropriate visual relief, complements the buildings and structures on the site, and provides an attractive environment for the enjoyment of the public.*

The entryway into the outdoor dining area, and leading to the main entrance of the restaurant, is enhanced by four topiary plants in square freestanding concrete planters. Combined with the proposed wrought iron guardrail fronting the sidewalk dining area, these landscape elements visually enhance both the streetscape and the building's facade.

7. *The design and location of buildings provide adequate light and air for the project site, adjacent properties, and the general public.*

The Project will not impact light and air for the site, adjacent properties, or the general public.

8. *Exterior lighting, mechanical equipment, and chimneys are appropriately designed and located to minimize visual, noise, and air quality impacts to adjacent properties and the general public.*

The three wall-mounted light fixtures, shown on the project's exterior elevations, are designed in order to minimize visual impacts to adjacent commercial and residential properties. These features will be approved with approval of a Certificate of Appropriateness by the Historic Preservation Commission. If the Historic Preservation Commission does not approve, or approves a different version of the light fixtures, the applicant shall submit for a modification to their Design Review Permit, for Planning Commission review. No new mechanical equipment is included in this application.

9. *The project provides a reasonable level of privacy to the site and adjacent properties, taking into consideration the density of the neighborhood, by appropriate landscaping, fencing, and window, deck, and patio configurations.*

The Project will not impact privacy to the site or adjacent properties. The landlord and the restaurant tenant will collaborate in managing operating hours and sound levels to ensure that hotel guests are not disturbed by the sidewalk dining use.

10. *Proposed entrances, exits, internal circulation, and parking spaces are configured to provide an appropriate level of traffic safety and ease of movement*

Personnel from Sausalito's Department of Public Works (the Department charged with regulating the use of public rights-of-way), and the Southern Marin Fire District, have reviewed the proposed Project and have offered Conditions of Approval to ensure public access and safety are maintained and not negatively impacted by the Project.

11. *The proposed design preserves protected trees and significant natural features on the site to a reasonable extent and minimizes site degradation from construction activities and other potential impacts.*

The Project involves no trees or natural features.

12. *The project site is consistent with the guidelines for heightened review for projects which exceed 80 percent of the maximum allowed floor area ratio and/or site coverage, as specified in subsection E of this section (Heightened Review Findings).*

The Project does not require Heightened Review.

13. *The project has been designed to ensure on-site structures do not crowd or overwhelm structures on neighboring properties. Design techniques to achieve this may include but are not limited to stepping upper levels back from the first level, incorporating facade articulations and divisions (such as building wall offsets), and using varying rooflines.*

The Project does not change the location, shape, or mass of the existing structure.

#### **MINOR USE PERMIT FINDINGS**

The Planning Commission must determine whether the project is in conformance with the following findings (SMC 10.58.050):

A. *The proposed use is allowed with issuance of a minor use permit, pursuant to Chapters 10.20 through 10.28 SMC (Zoning Districts Regulations), Chapter 10.44 SMC (Specific Use Requirements) or any other applicable section of this title.*

The proposed Outdoor dining area is allowed under SMC Section 10.44.220 Restaurants – Outdoor dining area, because the use conforms to the following:

- Sub-section A. Purpose. All 6 specific purposes listed therein.
- Sub-section C. Sidewalks. 3. Conditions a.- k
  - a. The construction of a new 5 ft. wide sidewalk around the proposed outdoor dining area provides a safe passage for pedestrians that is one foot wider than the required 48" minimum width. The perimeter planter boxes and wrought iron guardrail will prevent tables, chairs, and diners from spilling out and encroaching into the 5 ft. wide pedestrian passageway.
  - b. A map of the outdoor dining area has been provided to illustrate the location of the tables and chairs, which will be immediately adjacent to the restaurant that serves it.
  - c. The dining area will be kept clean and free of debris by the management of the adjacent restaurant.
  - d. Food service will be provided at the Outdoor dining area. Beverages, including beer and wine, will also be served, provided a request to the City Council is approved and a Condition Use Permit for alcohol service is issued by the Planning Commission.
  - e. The applicant will obtain the required liability insurance that will name the City as an additional insured, which will remain in force during the period of the Minor Use Permit.
  - f. The applicant will enter into a sidewalk dining Encroachment Permit agreement with the City, which includes indemnifying the City and holding it harmless from liability arising out of the Outside dining use.
  - g. The management of the dining area will adhere to the orderliness defined in this Condition, including removing the tables and chairs from the outdoor area when the restaurant is closed.
  - h. The applicant acknowledges the preeminence of the sidewalk for the public's right to use the sidewalk for passage and travel, such that the dining use is revocable if it conflicts with any public use.
  - i. The applicant will pay the City's annual permit fee for the outdoor dining use.
  - j. The applicant will comply with State Alcoholic Beverage Controls and Marin County Health standards.

k. The Minor Use Permit is subject to permanent revocation by the City at any time.

- Sub-section C. Sidewalks. 5. Alcoholic Beverages.  
The applicant will submit a separate request for City Council approval to serve beer and wine at the outdoor dining area, after any approvals from the Planning Commission for a Conditional Use Permit for alcohol service.
- Sub-section D. Capacity of Outdoor Eating Area.  
While the proposed outdoor dining area has more than 5 tables and a capacity greater than 20 people, it is not located on private property where this section only applies.
- Sub-section E. Parking.  
Because the proposed outdoor dining area is located in the public right-of-way, it is exempt from additional parking requirements.

*B. The proposed use is consistent with the general plan, the purposes of the Zoning Ordinance, and the purposes of the applicable zoning district.*

For consistency with the General Plan, see Finding 1. above for Design Review Permits. For compliance with the Sausalito Municipal Code (SMC), see Finding A. above for Minor Use Permits.

The proposed Outdoor dining area is consistent with SMC Section 10.24.020 Additional purposes in the Central Commercial Zoning District, because it:

- a. Serves both Sausalito residents and visitors.
- b. Helps to maintain an inviting shopping environment for visitors and residents, utilizing the area's natural attributes.
- c. Promotes ground-floor retail business with upper-floor residential (hotel) uses.
- d. Maintains the continuity of a continuous retail frontage.

*C. The proposed use, together with the applicable conditions, will not be detrimental to the public health, safety, or general welfare of the City.*

- The widening of the sidewalk to accommodate the proposed outdoor dining area and the new 5 foot wide sidewalk and 6" wide curb, has been designed to allow at its narrowest point on El Portal a 24 foot wide street width. This is sufficient for two 12 foot wide vehicular travel lane, which are the ideal standard width, one in each direction. The 24 foot proposed cumulative street width is 4 feet wider than the 20 foot width preferred by the Fire Department.
- Personnel from Sausalito's Department of Public Works (the Department charged with regulating the use of public right-of-way), and the Southern Marin Fire District, have reviewed the proposed project and have offered conditions of approval, which have been included in the draft resolution, to ensure public access and safety are maintained and not negatively impacted by the Project.



- The proposed outdoor dining area will include a new sidewalk that will replace the existing sidewalk that has too great a cross slope to comply with Americans with Disabilities Act (ADA) standards. The new proposed sidewalk will be constructed at the applicant's expense and conform to ADA standards, thus increasing public safety and providing a public benefit.

*D. The proposed use complies with each of the applicable provisions of the Zoning Ordinance. See the response to Findings A. & B. above for Minor Use Permits. Nothing in the proposed design conflicts with applicable provisions of the Zoning Ordinance.*

*E. The proposed use or facility is properly located relative to the community as a whole and to land uses and transportation and service facilities in the vicinity.*

El Portal is not a heavily traveled roadway for vehicles. It serves primarily as a loop road for vehicles south bound on Bridgeway to turn around and head back north. Its primary use is for vehicular access to the Inn Above Tide's parking court, and to serve as a loading zone for deliveries to the restaurant and two retail stores, and for hotel guests frequenting the Inn Above Tide and the Sausalito Hotel. Its width can adequately accommodate the wider sidewalk for the proposed outdoor dining area, while preserving the required space for curb-side loading.

El Portal is also a primary pedestrian way linking Bridgeway to the Ferry Landing, the Sausalito Yacht Club and Gabrielson Park. Currently, the sidewalk fronting the Sausalito Hotel is 8 ft wide. But when Café Tutti was open, they had placed planters and tables and chairs against the building, thereby reducing the sidewalk's width to about 5 ft. which did not create a problem for the public to pass by. What is proposed now is a similar wide sidewalk around the new Outdoor dining area. It should also be noted that there is a sidewalk on the other side of the street as well.

*F. The size and shape of the subject property is adequate to provide features needed to ensure reasonable compatibility with land uses normally permitted in the surrounding area. Features may include but not be limited to yards, open spaces, walls and fences, parking, loading, landscaping, and such features as may be required by this title or the Commission.*

The Sausalito Hotel's parcel along El Portal is 150 feet long. The length of the proposed outdoor dining area is 51 feet, only one third of the building's total frontage. In terms of the subject property, it can accommodate the proposed dining area in a compatible manner.

In addition to tables and chairs, the plan includes planter boxes and a wrought iron guardrail in an area that can accommodate such features, which will enhance the appearance of the use.

The construction of a new 5 foot wide sidewalk around the proposed dining area provides a safe passage for pedestrians that is one foot wider than the required 48" minimum width. The perimeter planter boxes and wrought iron guardrail will prevent tables, chairs, and diners from spilling out and encroaching into the 5 foot wide pedestrian passageway.

- G. Public utilities and facilities are or will be adequate to serve the proposed use, including streets and highways paved (and of adequate width) for the quantity and type of traffic it will generate.*

Personnel from Sausalito's Department of Public Works (the Department charged with regulating the use of public rights-of-way), and the Southern Marin Fire District, have reviewed the proposed Project and have offered Conditions of Approval to ensure public access and safety are maintained and not negatively impacted by the Project.

- H. The proposed use will not materially adversely affect nearby properties or their permitted uses.*

The proposed outdoor dining area only fronts the restaurant, so access will not be blocked to the entries to the art gallery, Sausalito Hotel, or the Chamber's retail store. Egress will also not be blocked from the emergency exit doors at the Art Gallery and the restaurant.

- I. Findings required by Chapter 10.44 SMC (Specific Use Requirements) for the approval of specific uses are made.*

See Finding A for Minor Use Permit above.

#### **ENCROACHMENT AGREEMENT FINDINGS**

Pursuant to Zoning Ordinance 10.56.060 (Encroachment Review and Agreements), the Planning Commission recommends City Council approval of an Encroachment Agreement based on the following findings:

- A. The proposed encroachment is compatible with the surrounding area and will either improve or not significantly diminish visual or physical public enjoyment of the streetscape upon which the encroachment is proposed.*

- The necessary sidewalk passage around the proposed outdoor dining area will be maintained.
- Many restaurants Downtown are allowed outdoor dining on the public sidewalks in areas that are more constricted in size.
- Dining outside on the sidewalk is encouraged in Sausalito to enliven the street, make it more visually active and appealing, enhance the economic vitality of the commercial district, and promote the success of local businesses.
- This proposed outdoor dining area will visually enhance the appearance of the Sausalito Hotel & vicinity.
- The proposed use is consistent with the City's current intent to revitalize its Downtown business district and make it more pedestrian oriented and user friendly.

- B. The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent.*

- The adjoining parcel is about 50 ft. away from the proposed outdoor dining area, which is unusual in the Downtown district.
- There already is a well-established precedent for allowing sidewalk dining.
- Many sidewalk dining areas in town look somewhat temporary in nature, or are in congested, or poorly defined or contained areas. This outdoor dining area is a handsome and well-established looking use in the public right-of-way, in an area that is ample, well defined, and well contained, without compromising the public's use of the right-of-way, or their ability to pass by safely.

*C. The encroachment is necessary to the reasonable use and enjoyment of the property and the extent of the encroachment is justifiable.*

Adding additional seating outdoors fronting the restaurant that this encroachment allows, will add to the economic viability and health of the restaurant, helping to ensure it success and longevity, along with a greater and continual contribution to the City's sale tax dollars. Allowing this encroachment benefits all concerned - the local business community, the City, the residents and visitors.

*D. The proposed encroachment will not adversely affect the public circulation nor create or constitute a hazard to public safety.*

Personnel from Sausalito's Department of Public Works (the Department charged with regulating the use of public rights-of-way), and the Southern Marin Fire District, have reviewed the proposed project and have offered Conditions of Approval to ensure public access and safety are maintained and not negatively impacted by the Project.

*E. The value of the proposed improvements will not prejudice a policy decision to terminate the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways.*

The only significant cost of the improvements within the public right-of-way is the wider sidewalk, and the additional tables, chairs, and planters; none of which is so substantial that the cost would prejudice the revocation of the Encroachment Permit in the future.